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No. 79-5269

IN THE

Supreme Court of the United States

October Term, 1979

ROBERT EDWARDS, *Petitioner,*

v.

THE STATE OF ARIZONA, *Respondent.*

On Writ Of Certiorari To The Arizona Supreme Court

SUPPLEMENTAL APPENDIX

ROBERT K. CORBIN
Attorney General
WILLIAM J. SCHAFER III
Chief Counsel
Criminal Division
CRANE MCCLENNEN
Assistant Attorney General
State Capitol Building
West Wing—Second Floor
Phoenix, Arizona 85007
602-255-4686
Attorneys for Respondent

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(Caption Omitted)

Proceedings March 17, 18, 1977
A-30683

[1-44] CLEVELAND REED,

was thereupon called as a witness in behalf of the State, and being first duly sworn, was examined and testified as follows:

THE COURT: Mr. Reed, the witnesses in this case are all under a Rule that prohibits them from being in the courtroom at any time except when they are testifying.

In addition, you're not to discuss anything concerning this case or your testimony with anyone except the attorneys until the case is finished.

You may take the witness stand.

You may proceed.

MR. LINGEMAN: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. LINGEMAN:

Q. Would you state your name, please.

A. Cleveland Reed.

Q. Are you also known as Kevin Reed?

A. Yes.

Q. Where are your residing at this time?

A. Pima County Jail.

Q. Mr. Reed, did you participate in the [1-45] armed robbery of the La Conga Bar back in October of 1974?

A. Yes.

Q. Have you ever been convicted of any felonies?

A. Yes.

Q. What felony or felonies?

A. Grand theft, armed robbery, burglary.

Q. Okay. Were any of those convictions here in Pima County?

A. Grand theft.

Q. Okay. After the robbery in October of 1974, at sometime after that did you get in trouble for something else?

A. After the robbery?

Q. Yes.

A. Yes. I got in trouble for grand theft.

Q. Here in Pima County?

A. Here in Pima County.

Q. And were you arrested by some police officers sometime in late 1975?

A. Yes, I was.

Q. Would that be somewhere around September of 1975?

A. No. I believe it was in July or August of '75.

[1-46] Q. Okay. Do you remember giving a statement to the police about the robbery of the La Conga Bar?

A. Yes, sir.

Q. Around that time?

A. Yes, I remember.

Q. Was that at around the time that you were arrested on those other charges that you gave the statement?

A. Yes. I had been incarcerated three or four weeks before I gave the statement.

Q. Have you had a chance to take a look at that statement sometime before coming in here to testify?

A. Yes, I have.

Q. Did that help your recollection as to the date of the statement?

A. Yes.

Q. What was the date of that statement?

A. September 17th, '75.

Q. Okay. Prior to giving that statement about your involvement in the La Conga Bar robbery, did you make some kind of an agreement between yourself and the police and the County Attorney's Office that you wouldn't be prosecuted for anything that happened to arise out of the [1-47] La Conga?

A. Yes, sir. I was granted immunity.

MR. EDWARDS: Objection. The D.A. is leading the witness.

THE COURT: Well, the present record may stand. Proceed.

Q. (By Mr. Lingeman) Is the reason—what was the reason for making—for giving that statement, why did you give that statement about the La Conga Bar?

A. I gave the statement about the La Conga Bar for two reasons.

One was to hope for a lesser charge being brought against me for the robbery-murder.

And, also, I was hoping to get some of the charges that I was presently incarcerated for dropped.

Q. And were some of the charges you were presently incarcerated for dropped?

A. Yes, sir.

Q. What were you charged with initially at that time?

A. Grand theft, grand theft auto and arson third degree.

Q. You ended up getting a deal of just pleading to grand theft; is that right?

[1-48] A. Yes.

Q. I think you have already indicated that you were given immunity on anything that arose out of the La Conga Bar.

A. Yes.

Q. You have also been convicted of a crime of robbery back in Kansas.

A. Yes, I was convicted of armed robbery, possession of a firearm, failure to appear.

Q. That was back in Kansas?

A. Yes, sir.

Q. Are you currently under sentence in Kansas?

A. Yes, sir. I'm currently serving five to 99 and one to ten and a one to five all concurrent in Kansas.

Q. Three sentences and the largest is five to 99.

A. Yes, sir. The controlling sentence is five to 99.

Q. Will you be going back to Kansas when you complete your testimony here to finish the sentence in Kansas?

A. Yes, sir.

Q. You also have a sentence in Pima County.

A. Yes, sir.

[1-49] Q. What is that sentence?

A. Three to four, grand theft.

[1-160] LARRY BUNTING,

was thereupon called as a witness in behalf of the State, and being first duly sworn, was examined and testified as follows:

THE COURT: Sergeant, the witnesses in this case are under the Rule.

THE WITNESS: Yes.

THE COURT: And you'll have to leave the courtroom after you have finished testifying and you're not to discuss your testimony with anyone except the attorneys until the case is finished.

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

BY MR. LINGEMAN:

Q. Please state your name and occupation for the Court.

A. Larry Bunting, Police Sergeant, City of Tucson.

Q. Are you in charge of any particular detail?

A. Yes, I am.

Q. What is that?

A. The Homicide Detail.

[1-161] Q. How long have you been acting in that capacity?

A. Since 1968.

Q. How long have you been a police officer?

A. Since 1960.

Q. Sgt. Bunting, did you have occasion to become involved in the investigation of the La Conga Bar murder-robbery back in October of 1974?

A. Yes, I did.

Q. Are you familiar with Detective Victor Marmion?

A. Yes, I am.

Q. Is he in your detail?

A. He was.

Q. Was he assigned that case?

A. He was.

Q. Did you also take part at some point in that case?

A. Yes, I did.

Q. Sometime in January, 1976, was there an arrest made involving suspects with that case?

A. That's correct.

Q. Was one of those people a Willie Barefield also known as Robert Edwards?

A. That's correct.

Q. Do you see that person in the courtroom?

[1-162] A. Yes, I do.

Q. Would you point him out to us, please?

A. Sitting at the defense table to Mr. Brogna's left wearing a blue shirt.

Q. Did you make the arrest personally on Mr. Edwards?

A. I was one of the arresting officers.

Q. Who else—

A. Detective Steve Bunting and a uniform officer by the name of Allen.

Q. And where did you make the arrest?

A. This was at an apartment on East Twenty-Third, Twenty-Third or Twenty-Fourth.

Q. How was it accomplished?

A. We went to that residence, located the suspect, placed him under arrest—after some resistance he was placed under arrest.

Q. Did Mr. Edwards ever attempt to flee from you?

A. Yes, he did.

Q. Did you advise him what you were arresting him for?

A. Yes, we did.

Q. Was that the first thing you did or where did that fit into—

A. Advised him who we were, the fact that [1-163] he was under arrest and a copy of the arrest warrant.

Q. What did he do at that time, that point?

A. Started resisting.

Q. Did he get away from you and start to run?

A. Yes.

Q. What happened then?

A. Officer Allen, the uniformed officer, was around the corner. He ran into Allen and was subsequently subdued and taken into custody.

Q. Was he taken to the Tucson Police Station?

A. He was.

Q. Was he advised of his constitutional rights?

A. He was.

Q. How was that done?

A. I advised him by reading from the card.

Q. Could you tell the jury briefly what the rights are that you advised Mr. Edwards of.

A. He was read the following rights: You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to the presence of an attorney to assist you prior to questioning and [1-164] to be with you during questioning if you so desire. If you can't afford an attorney, you have the right to have an attorney appointed for you prior to questioning.

He was asked, do you understand these rights; He indicated he did.

Now, having been advised of these rights and understanding these rights, will you answer my questions, which he did talk to us.

Q. You talked to him at the police station?

A. That's correct.

Q. That would be the day he was arrested.

A. That's true.

Q. Was that in the afternoon, morning or evening?

A. This was approximately four in the afternoon.

Q. About how long did you talk to Mr. Edwards?

A. All total?

Q. Well, that first day, I guess that's the only day you talked to him.

A. That's correct. I was in his presence, I would guess, two to three hours or so.

Q. Did you talk with him reference the La Conga Bar robbery?

[1-165] A. Yes, we did.

Q. Did you obtain a statement from him?

A. Yes, we did.

Q. What did that statement have reference to?

A. The statement had reference to his alibi.

Q. He gave you an alibi, is that correct, for the date in question?

A. Yes, he did.

Q. Was it—did you talk about this for quite some period of time?

A. We talked to him, yes, throughout the two to three hours we talked about it.

Q. After he gave you this alibi statement, was there a continuing conversation between you and Mr. Edwards?

A. Yes, there was.

Q. Could you explain the tenor of that conversation?

A. Subsequent to the alibi statement he indicated that he wanted—

THE COURT: Please.

MR. EDWARDS: Objection, Your Honor. Hearsay. Not relevant to the case.

THE COURT: Overruled.

THE WITNESS: After—

[1-166] THE COURT: Wait a minute. Relevant? Will the reporter please read the question.

(Whereupon, the reporter did as requested.)

THE COURT: Overruled.

THE WITNESS: After the alibi statement, he indicated he wanted to make a deal, that he had been around and wanted to make a deal with me and I offered him no deal except to explain his side of the situation.

As a matter of fact, he insisted upon talking with the prosecutor in the case. We even eventually made contact with a prosecutor, with the County Attorney's Office. No deal was given to him and we left him with the—him stating that he was going to get an attorney to make a deal for him.

Q. (By Mr. Lingeman) Okay. After he gave the alibi statement and before he began indicating that he wanted a deal and wanted to talk to a county attorney, did you indicate to him that you didn't believe that—

THE COURT: You're leading the witness, Mr. Lingeman. Don't lead the witness.

Q. (By Mr. Lingeman) What did you do, if anything, indicated to him reference the alibi [1-167] statement that he had given to you after that was completed?

A. I indicated to him I didn't believe his alibi at all.

Q. Was that when this request for a deal began and this discussion of a deal?

A. Subsequent to that, yes.

Q. Okay. How long did you go back and forth about this deal?

A. Approximately an hour or so.

Q. You said a county attorney was contacted.

A. Yes.

Q. That wasn't myself, was it?

A. That's correct.

Q. Was there some other county attorney or county attorneys involved at that stage?

A. At that stage Deputy County Attorney Don Becker was involved and we were unable to get ahold of him.

But the contact was made with Chief Deputy County Attorney Randy Stevens that night.

Q. Ultimately you ceased this interview and that was about what time?

A. I believe around seven in the evening.

Q. Now, was that the extent of your conversation with Mr. Edwards reference this case?

[1-168] A. It was.

Q. Okay. And I take it at some time another detective may have spoken to Mr. Edwards, if you know.

A. Yes.

Q. Okay. But you weren't present during any other discussions with him; is that correct?

A. That's correct.

MR. LINGEMAN: That's all the questions I have.

THE COURT: You may cross-examine, Mr. Edwards.

CROSS-EXAMINATION

BY MR. EDWARDS:

Q. Can you remember the date, Sgt. Bunting, that you came to arrest me?

A. January 14th, I think.

Q. Fourteenth?

A. I believe the 14th or 18th.

Q. What year?

A. 1976.

Q. January 14th.

On January 14th that you came to arrest me, did you have another officer with you?

A. That's correct.

[1-169] Q. Would you tell the Court his name?

A. Steve Bunting.

Q. Steve Bunting?

A. No relation.

Q. Was there any people out there while you was knocking—did you see any people, generalized people out there when you was knocking on the door to find out where I stayed?

A. I saw you and the lady that was living in the apartment.

Q. You seen nobody else?

A. I don't recall anybody else. Some children, perhaps, but no adults.

Q. You seen some children.

Now, is it—is it a procedure of the police department to—to—when they come to arrest people, is it a procedure—how do you go about arresting people, do you just read them the warrant and put handcuffs on them and that's it?

A. It depends upon the type of individual to be arrested and the circumstances.

Q. Now, you was with Bunting that day, you said Steve Bunting.

A. Steve Bunting, yes.

Q. That's right. Steve Bunting.

[1-170] Is it a procedure that when you come to arrest somebody you come to arrest people with your guns on and your guns out if you're armed or what?

A. There again, the best answer I can give you, depending on the circumstances and the type of individual and the charges.

Q. Mr. Bunting, when you took me to the police station and interrogated me for how long you say, four hours, three or four hours?

A. I was in your presence approximately three hours, yes.

Q. You say I made a statement.

A. That is correct.

Q. Not a alibi statement.

A. As a matter of fact, it is what I would consider an alibi statement and in your own words it was an alibi.

Q. What is alibi—is alibi saying you wasn't there and denying that you was denied (sic) in the crime?

A. That's correct. Naming people who could place you other places.

Q. So you saying that I made a statement denying that I was at the scene of the crime.

A. That's correct.

[1-171] Q. Did I make a oral statement or a taped statement?

A. You made a taped statement.

Q. Mr. Bunting, did anybody at the police station, can you remember, interrogated me—is it a regular procedure that when you are interrogating people you have more than one police interrogate the people, you have them coming in and out the door constantly?

A. No.

Q. What did you say?

A. No.

Q. Mr. Bunting, you made out a police report; is that correct?

A. That is correct.

Q. Do you remember the police report you made out of ever stating that—that while you was interrogating me at the time of the incident that you said that you didn't believe my—my statement I made to you.

I mean, do all police officers believe when people say they isn't involved in a crime?

A. I'm not sure I understand your question.

Q. I'll state it more clearly, Mr. Bunting.

Do—is it a job for a police to [1-172] believe when a person is asked his involvement in the—in a crime to tell that he wasn't involved in a crime?

Is it a thing that a police that when a person says, "I'm not involved in a crime, I didn't do it," you have—you have conjumptions (phonetic) to believe that he was involved; am I correct?

A. An attempt—correct me if I don't understand—I may misunderstand your question.

Q. Yes.

A. We—or at least myself, dealing with suspects, often are lied to. If that answers your question.

Q. I have one more question to ask you.

It's involvement in your investigation, your—you say you was—you did investigate the La Conga Bar murder, am I correct?

A. I was involved in the investigation.

Detective Marmion was assigned by myself as the lead detective on the case.

I supervise the members of the Homicide Detail. There are other detectives in the detail other than Marmion.

Q. Is it—do—when you arrest people for crimes of being committed, and when they [1-173] being interrogated, do—is it a formal procedure by the police department to—if they have somebody else, what you say, a defendant make another statement against them, is it a formula for the police to play a statement to a client or to a person that he can hear the statement and then—and then—and then lead him to kind of say what he want to say?

A. It's often done when there are multiple suspects in a case and one or more of those suspects has given statements implicating other people.

It's often done that the statement is played or read to the other suspects to indicate to that suspect that, yes, you know, we are not lying to you, this guy told us about it.

Q. Could you give approximate time—do you play the statement over and over or do you just give a little formality thing he can hear and then say okay and cut it off?

A. Depending on the circumstances, whatever—often suspects don't believe that a partner in crime has actually confessed. And sometimes after they hear certain parts of the conversation or certain facts, this person has related, then the guy decides, well, he's going [1-174] to try to tell his side of the story.

Q. Well, Mr. Bunting, as you said, that after I had gave a statement to the police, I think in your—in your report, I don't know if you put it in the report, I think it was played that there was statements read to me of some statements put in my face and then I made that statement that I wasn't involved.

Am I correct?

A. Can you repeat that again?

Q. I'll repeat it more clearly, Mr. Bunting.

I was saying, Mr. Bunting, when I was arrested and taken to the police department and interrogated, there was a statement in front of me, Mr. Reed's statement, that I could look at, you know, and review.

And then—and then I made a statement. I said I would talk to you. Didn't I say that? I would talk to you about my—my side of the story.

A. No. If—if I can see the—give the proper setting.

At the initial time whenever we started interviewing you I explained to you the statements of Reed and also Soto.

And it was at that time that you [1-175] said you were not involved and you had an alibi and you wanted to make a statement.

This was your alibi statement.

Q. Now, Mr.—

A. Then that statement was taken.

Q. Then—

A. Then is when the further discussion about your wanting to make a deal and so forth.

Q. Now, when I asked—you talking about the deal. Was that in my statement that I made to you that I wanted to make a deal?

A. In the tape-recorded statement?

Q. Right.

A. No, it was not.

Q. So this was supposed to have been off the record.

A. No. There was nothing ever said it was supposed to be off the record. We don't go off the record. Everything you say to us goes on the record.

Q. So you got this on the tape that I was going to make a deal.

A. Not on the tape.

Q. So this is nothing but hearsay, Mr. Bunting; is this correct?

MR. LINGEMAN: I believe I want to [1-176] object. He's arguing with the witness and arguing legal principles.

THE COURT: Sustained. I sustained an objection to that question and you will have to ask another question.

MR. EDWARDS: Yes, sir, I understand.

Q. (By Mr. Edwards) I'll say, Mr. Bunting, that how long when you interrogate a person—you say you interrogated me four hours, am I correct?

A. No, sir.

Q. You didn't say that?

A. No, sir.

Q. Explain to the Court how long that you interrogated me.

A. Approximately three hours of interviewing and in my presence. It was not a sustained three-hour interrogation.

Q. Well, was you the only one interrogated me?

A. No. There—Detective Steve Bunting talked to you and Detective Hallums also talked to you.

Q. Did you ever ask, to your recollection, that I wanted to talk to all these police coming in and out the door?

[1-177] A. Beg pardon?

Q. I'll make it more clearly, Mr. Bunting.

Did I ever tell you that I wanted to talk to these police individuals all the time coming in and out the door?

A. No, there was just the three officers.

Q. Now, there was—there was just three officers that interrogated me, am I correct?

A. To my knowledge there was only two officers that talked to you about this, myself and Steve Bunting.

Q. There was two or three, there was three, am I correct?

A. Three is correct. Three officers.

Q. That's right. Now, Mr. Bunting, is it a regular procedure that—that a person that be questioned, being interrogated, if he is read his rights and he's asked for a lawyer, do you all in this procedure constantly keep interrogating or just cut the interrogation off or what do you do? Tell me your procedure.

A. Prior to a subject or a suspect giving a statement, he must waive his rights.

In those rights he is waiving the presence of an attorney.

Q. Now, did anytime—at anytime that the [1-178] statement that you got from another defendant, at anytime that—when your interrogation of me, did I give you details of and involve myself in a murder case?

A. At no time during my interview with you did you implicate yourself in this murder, if that answers your question, sir.

Q. Mr. Bunting, I have one more question to ask of you.

Do you know the officers that took me down that night to the County Jail?

A. I don't recall how you were transported to the County Jail.

Q. Do you recall ever—after this interrogation and the time that I did not involve myself in a crime that I was tooken down and put—put in jail, in solitary, and do you

recall at anytime that morning when I was in solitary, put in solitary confinement, do you recall at anytime that morning did you send any other detective down there to talk to me?

A. I did not send any detective down to talk to you wherever you were at in the County Jail.

And I had no knowledge that you were in solitary.

[1-179] Q. Mr. Bunting, at anytime did—at anytime did I call down to your police station when I was arrested that night to ask any police to come down and talk to me that you hear or anything?

A. Not to my knowledge.

Q. Did you on the time when I was leaving from the interrogation room, did I tell you at anytime there in your report that I wanted to talk to some more policeman?

A. No.

MR. EDWARDS: That's all I have.

THE COURT: Mr. Lingeman, redirect.

REDIRECT EXAMINATION

BY MR. LINGEMAN:

Q. You indicated, Sgt. Bunting, that you advised the defendant of his constitutional rights down at the police station; is that correct?

A. That's correct.

Q. Was this prior to the taped statement or before the taped statement or both?

A. There were two times he was advised. Prior to the interview and then again on tape.

Q. Did he ever indicate to you that he wanted an attorney present or invoke any of his other rights?

[1-180] A. No, he did not.

Q. After you had the alibi statement from Mr. Edwards and he indicated that he wanted a deal, did he indicate to you that if a deal were made he would talk to you some more?

A. That was what he was trying—he was trying to get me to commit myself to a deal. And then he would tell me what he knew.

MR. LINGEMAN: That's all.

THE COURT: Do you have recross?

MR. EDWARDS: Yes, Your Honor, I have one more thing to say.

RECROSS-EXAMINATION

BY MR. EDWARDS:

Q. You just stated that at no time I asked for a attorney; am I correct?

A. That's correct.

Q. Would you read that to yourself there, Mr.—

A. Barefield—

MR. LINGEMAN: Excuse me.

THE COURT: He said to yourself.

THE WITNESS: Oh, I'm sorry.

Q. (By Mr. Edwards) Do you remember that?

A. That is correct.

[1-181] Q. Are you saying you just stated and then I didn't ask for a attorney?

A. This does not state that you were asking for an attorney.

Q. Stating that you are—you are saying that I similar asked for a attorney to make a deal, that I would wait until I got my attorney until I made a deal.

A. That's correct. You said, "I will wait until I get an attorney to make a deal," but you never requested an attorney.

Q. But that's what you said.

A. Yeah, that's what I said.

Q. And one more thing. Did I ask anytime—you said you read me my rights, you read them before and after.

How many times did you read my rights, Mr. Bunting?

A. Twice.

Q. And at anytime did I ask you again when I left from that interrogation room that anytime I told you or your officers or anyone, mainly you, any of you, of your officers, come to see me because later there was something I was going to talk to the police officers?

A. I can only answer to what you said in [1-182] my presence and I don't know what you may or may not have said in the presence of any other officers outside of my hearing.

In my presence you did not request anybody to come talk to you.

MR. EDWARDS: That's all I have.

THE COURT: May he be excused?

MR. LINGEMAN: Yes, Your Honor.

THE COURT: You're excused and thank you.

(Witness excused.)

(Caption Omitted)

Proceedings March 21, 1977

A-30683

[2-17] VICTOR Z. MARMION,

was thereupon called as a witness in behalf of the State, and being first duly sworn, was examined and testified as follows:

THE COURT: Detective, the witnesses in this case are under the Rule so you can't be in the courtroom at any time except when you're testifying.

You're not to discuss your testimony with anyone except the attorneys until the case is finished.

THE WITNESS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. LINGEMAN:

Q. Please state your name and occupation.

A. Victor Z. Marmion, Homicide Detective, City of Tucson.

[2-18] Q. How long have you been so employed?

A. As a police officer a little over ten years. As a homicide detective a little over three years.

Q. Did you ever have occasion to become involved in the investigation of the murder-robbery-burglary of the La Conga Bar back in 1974?

A. I did.

Q. Were you assigned to that case?

A. I was.

Q. Did you continue to investigate it right up to the present date?

A. I did.

Q. Okay. With regard to the La Conga Bar robbery-murder, did you have occasion in 1975 to come in contact with a person by the name of Kevin Reed, aka as Cleveland Reed?

A. Yes, sir.

Q. How did that happen?

A. I was called to the County Attorney's Office, I believe it was by Mr. Harold Higgins by the County Attorney's Office. I was told there was a subject up there named Kevin Reed who wanted to give us a statement on the case.

Q. Did you have a conversation with Mr. Reed?

[2-19] A. I did, sir.

Q. Was a deal made with Mr. Reed in order to secure his cooperation I—

THE COURT: Just a minute.

MR. EDWARDS: I object the way he is leading the witness.

THE COURT: Overruled. You may answer this question.

THE WITNESS: Yes, sir a deal was made through—

THE COURT: I think you have answered it now. Ask another question.

Q. (By Mr. Lingeman) After this statement was made did you obtain a statement from Mr. Reed?

A. Approximately six days later, I believe it was the 17th of September, 1975, when Detective Martin and myself took a statement from Mr. Reed.

Q. At some point in time after you took that statement did Mr. Reed retain—or gain a different status as far as his court appearances were required?

MR. EDWARDS: Object, Your Honor. The district attorney is leading the witness.

THE COURT: You may answer yes or no.

THE WITNESS: Yes.

Q. (By Mr. Lingeman) Okay. Subsequently [2-20] did Mr. Reed get out of jail?

A. He did.

Q. Was there anything that you were supposed to do or Mr. Reed was supposed to do while he was out of jail back in October or whenever it was that—'75—that he got out of jail?

A. No, sir, not that he was supposed to do.

He had agreed to help me in trying to solve the murder case.

Q. You had already gotten statements from Mr. Reed; is that correct?

A. That's correct.

Q. At some point after that did you make an arrest on a person named Robert Edwards, also known as Willie Barefield?

A. I didn't make the arrest. The arrest was made by other detectives of the Tucson Police Department.

Q. Was that under a warrant for the arrest reference the La Conga Bar robbery-murder-burglary?

A. Yes, sir.

Q. Was that in January?

A. I believe it was on the 19th of January of 1976.

Q. Okay. Were you present at the [2-21] arrest or immediately after at the Tucson Police Department?

A. I was present at the Detective Division where Mr. Barefield had been brought.

Q. Did you participate in the conversation with him at that time?

A. No, sir, I did not.

Q. Do you know who was talking with Mr. Barefield at that time?

A. Sgt. Bunting and Detective Steve Bunting.

Q. Okay. The next day did you have occasion to talk to Mr. Edwards?

A. We did. I say we. I mean Detective Milne and myself.

Q. How did that come about?

A. I decided to go over there and talk to Mr. Barfield at the County Jail.

Q. What would have been the date of the conversation?

A. The 20th of January, 1976.

Q. Okay. Was this the immediate day after the arrest?

A. Yes, sir.

Q. Okay. Did you advise the defendant of his constitutional rights?

A. I did.

[2-22] Q. How did you do that?

A. Verbatim from the department standard rights card.

Q. Could you advise the jury the way you did advise Mr. Barefield on the day in question.

A. Yes. You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to the presence of an attorney to assist you prior to questioning and to be with you during questioning if you so desire. If you cannot afford an attoney, you have the right to have an attorney appointed for you prior to questioning.

Then I asked him, do you understand these rights?

I also told him, now, having been advised of these rights, and understanding these rights, will you answer my questions.

Q. Did he indicate to you that he understood his rights?

A. He did.

Q. Did he indicate to you that he would answer your questions?

A. Yes.

Q. Did you at any time play a part of a statement by Mr. Manny Soto to Mr. Edwards?

[2-23] A. I did.

Q. About how much of that statement did you play?

A. Approximately nine, no more than 12 minutes.

Q. After you played that portion of Mr. Soto's statement, did you ask Mr. Edwards some questions about the La Conga Bar incident?

A. We did.

Q. Okay. Did you tape record that conversation?

A. No, sir.

Q. Why is that?

A. I asked Mr. Barefield if he would be willing to give me a taped statement. He indicated he did not, because he did not want to have it used against him in court later.

He indicated he would give me a verbal or oral statement, but nothing on tape.

Q. Did you take some time to talk to him about the statement after he told you that?

A. I did.

Q. What did you tell him?

A. I don't recall my exact words, but I said something to the effect, "Well, look, big deal. Milne and I are here together. If you give [2-24] us a verbal statement, we can use that against you in court."

He said he understood. He indicated he would talk to us, tell us anything we wanted to know, but he didn't want it on tape.

Q. Subsequently did he give you his version of what had happened at the La Conga Bar?

A. He did.

Q. Can you tell me what he told you reference the La Conga Bar incident?

THE COURT: Just a minute.

MR. EDWARDS: Objection. Lack of foundation and other legal issues already raised.

THE COURT: Well, the foundation, I think we should have the time and place more definitely and make certain who was present, Mr. Lingeman.

Q. (By Mr. Lingeman) Detective Marmion, I think you have already indicated it was the morning of the 20th.

Could you be more specific about what time it would have been?

A. Approximately nine, nine fifteen a.m.

Q. Who else besides yourself and Detective Milne, who you have already referred to, and Mr. Edwards, was present?

[2-25] A. That's all. Just the three of us.

Q. Was this at the County Jail?

A. It was.

Q. Okay. Why don't you go ahead—

THE COURT: One other foundation. I don't think he has identified the defendant.

Q. (By Mr. Lingeman) Would you please point to the person in this courtroom, if you see him, that you had the conversation with that you have been referring to as Robert Edwards and Willie Barefield.

A. The Negro gentleman to Mr. Brogna's right at the defense table.

MR. LINGEMAN: May the record indicate that the witness has identified the defendant?

THE COURT: Yes. Do you have any other foundation you claim is lacking, Mr. Edwards?

MR. EDWARDS: No more foundation. Just a legal issue that we already raised.

THE COURT: Your objection is overruled and you may answer the question.

THE WITNESS: Would you repeat the question again.

Q. (By Mr. Lingeman) Would you relate to us the conversation you had reference the La Conga Bar.

[2-26] A. Yes. Very briefly, Mr. Barefield told Detective Milne and myself that he had gone over to Manny Soto's house located in the area of Tenth and University. He said he went there approximately three days prior to the murder in question.

He indicated to us at that time that Kevin Reed was also at Manny's house and at that time they were talking about pulling the robbery at the La Conga.

He indicated to us it was at that time that he decided to go along with them.

They went there with the intentions of robbing the old man, in his words.

On the night of the murder, the 9th of October, '74, they arrived in the area of the La Conga approximately 12:30 a.m.

Albert Williams, Manny Soto and Willie Williams were going to act as lookouts and he and Kevin Reed went into the bar.

Barefield stated he was the one that was with Mrs. Esparza and the second victim, Mr. Mungia, was taken into the back room by one of the other defendants, Kevin Reed.

Sometime during the time this was going on he indicated that some shots had been fired and it was Kevin Reed who had fired the [2-27] shots, because the gun had a hair trigger on it.

Mr. Edwards indicated to me he didn't take anything from Mrs. Esparza. He didn't hurt her.

He subsequently took her into the back room where the safe was at and where Kevin Reed and Mr. Mungia were at. Mr. Edwards indicated that Kevin Reed was holding Mr. Mungia at gunpoint and that Kevin Reed forced Mr. Mungia to take the money box and some money bags out of the safe and that Kevin Reed took Mr. Mungia's brown wallet, some money, a wrist watch, and a gold ring with a red ruby stone.

He indicated that Mr. Reed kept possession of all the items except the gold ring with the red ruby stone which he kept himself.

Shortly thereafter Mr. Mungia was left in the chair slumped over and they got scared—I don't recall him saying why.

They ran from the bar. As they ran from the bar they met the other three suspects, a total of five, and ran.

Q. Did he say what the other suspects were doing?

A. Yes, sir. They were supposed to act as lookouts.

[2-28] Q. Did he indicate whether or not he had a gun when he was holding Nellie Esparza in the front of the bar?

A. No, sir. Mr. Barefield told me that the only person that had a gun was Kevin Reed.

Q. Is that all the conversation that you can recall that you had with Mr. Edwards on that day?

A. I remember asking him a couple of questions, but I don't recall what his answers were.

I remember I asked him if he was wearing a stocking mask on that night and I don't remember what his answer was.

Q. Did you make a report up after you had this conversation, including in the report the substance of the conversation that you had?

A. Most of my conversation was covered in my supplement.

Q. Now, you have already testified that at the point where you had a conversation with Mr. Reed, which would have been some months earlier, a deal was made; is that correct?

A. Through the County Attorney's Office, yes, sir.

Q. Up until that time, the time that you got [2-29] together with Mr. Reed, did you have any other investigative leads on this particular case?

A. Shortly after the homicide I had received information from a reliable confidential informant that Willie Williams and Manny Soto were involved in this.

THE COURT: Just a minute.

MR. EDWARDS: I object. Hearsay.

THE COURT: Sustained. I'm going to strike the witness' answer and the jury is to disregard the answer.

Q. (By Mr. Lingeman) My question is, at the time that you made the deal with Mr. Reed, did you have any investigative leads or was the case at an end as far as you were concerned from the investigation standpoint up until the time you got Mr. Reed?

A. At that time I had pretty well exhausted all my possible leads on the case.

Q. What was the reason for the deal that was made with Mr. Reed?

THE COURT: Just a minute.

MR. EDWARDS: Objection. Immaterial.

THE COURT: Sustained.

Q. (By Mr. Lingeman) If you did not have the statement of Mr. Reed, would you have been able [2-30] to solve the case?

THE COURT: Just a minute.

MR. EDWARDS: Objection. Calls for a conclusion.

THE COURT: Sustained.

MR. LINGEMAN: I have no further questions.

THE COURT: You may cross-examine.

MR. EDWARDS: I would like to exhibit Marmion's statement.

THE COURT: You may walk up and get it, Mr. Edwards.

CROSS-EXAMINATION

BY MR. EDWARDS:

Q. Mr.—Detective Marmion, am I correct?

A. Yes, sir.

Q. Do you remember the time of day that they arrest me, can you recall?

A. You were arrested on January 19th, 1976. I don't recall the exact time. Approximately I know. It would be a guess on my part. I'm not positive.

Q. Do you know the arresting officer that arrested me on that date of January 19th, 1976?

A. I do.

[2-31] Q. Could you repeat that to the Court.

A. Detective Sergeant Bunting. Detective Steve Bunting, and Officer Allen with the Uniform Division.

Q. Mr. Marmion, on that day of January 19th when I was arrested, you wasn't the one that interrogated me, am I correct?

A. That's correct.

Q. Was it Steve Bunting and Larry Bunting?

A. Well, I can only say that I saw you in the room with Detective Bunting and Sgt. Bunting. I wasn't present when the actual interview was taking place.

Q. Did they ever after the arrest, January 19th, when they took me to jail, and I was in a solitary on that day of January, do you remember what morning that you come to see me?

A. Well, if I understand you right, I believe I'm getting three questions out of that one.

First of all, I don't know if you were in solitary.

Second of all, it was on the 20th of January, '76, which would have been a Tuesday morning.

Q. Tuesday morning?

A. I believe so.

[2-32] Q. Did Steve Bunting ask you to come down and talk to me?

A. No. I went there of my own accord.

Q. Did I call you to come and talk to me?

A. No, you didn't.

Q. Did Mr. Steve Bunting tell you that I had made a statement?

A. I knew that you had talked to Sgt. Bunting and Detective Bunting.

Q. Do you remember whether it was a taped statement?

A. I know that they had taken a taped statement, yes.

Q. Did you ever see the first taped statement that was given; did you ever see it, Mr. Marmion?

A. I saw it, but it wasn't until sometime later.

I say sometime later. I mean days later because it had to be transcribed and typed.

Q. Do you recognize that, Mr. Marmion?

A. Well—

THE COURT: What is that, by the way? Let me see the exhibit number for the record.

Exhibit K.

THE WITNESS: It's my understanding in [2-33] talking to Sgt. Bunting this was a transcript of your conversation with him.

However, I can't testify to it because I wasn't present when this conversation took place.

Q. (By Mr. Edwards) Do you recall that statement? You say you looked over it.

A. I just briefly went through it later on, yes.

Q. Was it there, the type of involvement or any involvement in that taped statement I gave saying I was in any crime?

A. I don't quite understand the question.

Q. I'll make it more clear, Mr. Marmion.

Is that statement that I made on tape knowing that it could be used against me, was there any involvement that was involved in any crime that I made on the taped statement?

MR. LINGEMAN: Objection, Your Honor. Based on hearsay.

Q. (By Mr. Edwards) Could you read it, Mr. Marmion?

A. I just very, very briefly read it. If you're going to—I very briefly read it.

Q. Oh. You very briefly read it.

A. I don't recall the details. In order to [2-34] refresh my memory I would have to read it.

Q. Would you refresh your memory, Mr. Marmion.

A. Yes. Do you want me to read the whole thing?

Q. Yes.

MR. LINGEMAN: Your Honor, could we approach the Bench?

THE COURT: Yes.

(Whereupon, a bench conference was had out of the hearing of the jury, to-wit:)

MR. LINGEMAN: It's apparent that the witness is not going to be able to testify to the facts contained in the report or the statement because he was not present at the time. He is not the proper witness.

It seems useless to have him read the statement for a half hour.

THE COURT: Do you object to him reading it?

MR. EDWARDS: I'm asking him to read it to himself, not out loud.

THE COURT: But even if he does, any question you asked him would be objectionable. He can't testify. There are all kinds of reasons. It would be a conclusion on his part. The state-[2-35]ment speaks for itself. It's hearsay. There is no proof that he read this before he went to the jail and talked to you.

In fact, the proof is to the contrary.

I'll sustain all the objections and have you get into another area.

(Open court.)

THE COURT: I sustained an objection to your reading the exhibit and unless something further arises you're not to read it.

Ask another question, Mr. Edwards.

Q. (By Mr. Edwards) Mr. Marmion, when you came down with Detective Miles (sic) after I was arrested January 19th, do you remember the morning what time it was, you know, do you remember the time that you came and interviewed me?

A. It was with Detective Milne and it was approximately 9:15 a.m.

Q. Now, on nine fifteen, Mr. Marmion, you came down here on your own request after knowingly that I asked not to talk to anyone.

A. I didn't know that and I did go of my own accord. No one told me to go and no one requested me to go.

Q. Now, when you—when I was pulled out [2-36] of confinement and into the interrogation, was it a attorney booth that you recollect was the attorney booth that you and Detective Miles I was brought to?

A. When Detective Milne and I had a conversation with you it was in one of the—or one of the attorneys' booths as they are commonly referred to.

Q. You started reading me my rights before I got in the room.

A. Before I had any conversation, that's the first thing I did, that's correct.

Q. Did you play—did you play any tapes toward me, you know, did you play, like you say, you played the Soto tape in my behalf so I could listen to the evidence, the procedure that you go through.

A. At your request I did play part of Manny Soto's taped statement.

Q. Then I gave you a statement.

A. You did subsequently, yes.

Q. Mr. Marmion, did I request for you to play the tape statement over so I could hear them, do you remember?

A. No. No. I had the—I had the file and tape myself. I was the chief investigator in [2-37] the case. I brought them on my own.

Q. You always carry other people's tapes?

A. It's not unusual. Not in all cases, but I do carry them sometimes, yes.

Q. Now, when I gave you a statement verbally, did you make notes or how do the procedure go of a verbally statement?

A. How did I make notes in reference to your statement to me?

Q. Right.

A. After we had conducted the interview with you, when Detective Milne and I went outside we got in our police vehicle. I talked into the tape recorder and recorded everything you had told us.

Q. So you took down notes of what I told you, am I correct?

A. No. I didn't take notes at that time. I just put it on tape when we walked out of the jail and got into our police car.

Q. You made a statement to the Court that—saying that you told me, Mr. Edwards, you know that what—which way ever you talk you can use it against me in a court. It could be used against me.

A. Yes, I did.

[2-38] Q. Now, Mr. Marmion, to recollect your memory, did you ever—did you ever tell me that—that—that Williams was already caught or on that date that Williams was already caught and he was going to tell you everything and something like that toward me; did you ever say that in your conversation with me on that date of January 20th, 1976?

A. I remember when Detective Milne and I were talking to you in one of the attorneys' booths that we were notified that we were wanted at the Detectives Division because Willie Williams had been apprehended, yes.

Q. You didn't answer my question.

I asked you did you tell me that you knew Williams was going to talk to you and include me in the crime of a murder and robbery?

A. I don't recall telling you that.

Q. You recall other things, but you don't recall that.

A. Yes. I'm sure we were inside the room and were contacted by one of the jailers and we were told that Willie Williams was in custody and they were awaiting—you were there when we were told this, but I don't remember telling you that Willie Williams was going to talk or anything like [2-39] that.

Q. You don't remember saying that?

A. I don't remember saying that, no.

Q. Mr. Marmion, everything that you can recollect that you said that I didn't want a taped statement used, that knowingly that—that I didn't want used against me, but knowing I could make a verbally statement, that that could be used against me.

Mr. Marmion, is that a intelligent knowing that if he make a taped statement and knowing that it could be used against him, that if he knowing that, if he say anything in front of the police that it can be used against him, that if he says anything in front of the police that it could be used against him, is that a very bright person, Mr. Marmion?

A. I lost you about halfway through that.

Q. I'll explain it to you again, Mr. Marmion.

On the date of January 20th, 1976, are you saying that I was sitting there with you and Detective Miles, am I correct?

A. Detective Milne. That's correct.

Q. And I said that I did not want a tape statement because it could be used against me in [2-40] a court of law.

A. That's correct.

Q. But a verbally statement could be used and before I made that verbally statement and you stated, "Mr. Edwards, you make a taped statement or a verbally statement, either one could be used against you in a court of law."

A. If I understood your question correctly, you indicated you would talk to us.

I indicated—I made it very clear to you that your verbal statement could be used against you.

You replied that you understood, but you wouldn't give us a taped statement because you didn't want it used against you in court at a later time.

Q. Mr. Marmion, so you're telling the Court that—that I made—that it was a oral statement, so I know that could be used against me.

A. What I'm telling the Court is—what I'm testifying is what I remember happened that particular day, what you said to me.

And you said you would talk to us and tell us what you knew, but you wouldn't give us a taped statement. That's what I'm telling the Court.

[2-41] I also explained to you—

Q. I just asked a question yes or no.

I asked you, all I asked you, Mr. Marmion, did I say that I know that a oral statement could be used against me so I was going to make a oral statement.

A. Yes. You made it very clear to me that you understood. That's what I'm telling the Court.

Q. Do you have that in your report, Mr. Marmion?

A. I don't believe I do, no. Which part are you referring to?

Q. Your report. Now, I know, Mr. Marmion, that when Steve Bunting made a report and everthing I said he put in the report, everything our conversation, is it—is it a police or the way procedure they go that everything you say they put in the reports? I mean, on paper everything you tell them.

A. We try to put the majority of our information on one of our reports. It's impossible for us to put all the information on.

Q. So everything that I said are supposed to discriminate me that you could put down, but things that I did not say or you can't recall or [2-42] recollect, then you saying that I could—that I did make a statement orally, knowingly and intelligent knowing that it could be used agianst me, that you explained that even before I even gave you a statement.

A. I believe I got three questions out of that.

THE COURT: Would the reporter read the last question, please.

(Whereupon, the reporter did as requested.)

THE WITNESS: I explained to you in the presence of Detective Milne that the statement would be against you, the oral statement. I have the majority of the information in my supplement, not all of it. As I indicated, I can't record everything on my reports. It's impossible.

Q. (By Mr. Edwards) Did you—

A. As far as my discriminating, I don't discriminate in my police reports regardless.

Q. I did not ask you that. I asked you when I gave a oral statement what you saying a confession, did Mr.—Detective Miles, did he ever leave the room when I was talking to you?

A. Detective Milne was there the entire period of time except for a very short period of [2-43] time when he walked out in reference to Willie Williams being apprehended for a matter of a minute, maybe two minutes.

Q. But he left the room.

A. For a very short period of time. Maybe a minute or two.

Q. One question, Mr. Marmion, I must ask you. That—that all police procedures and all officers do interrogations go by procedures or interrogations the way that you all—that the line of that you direct a procedure, do they go all by line procedure or by line of procedure or just by the form of, you know, procedures? Do they go by the procedures?

A. No, sir, there is not a procedure.

Q. There is no procedure?

A. Depending on the circumstances.

Q. Mr. Marmion, on that morning of the 20th, I recall that—Mr. Marmion, on the 20th—on the 21st, I think it was the 21st, did you ever come down again?

A. Come down where?

Q. Back to the jail.

A. I did,

Q. Who did you come and talk to?

A. Willie Williams.

[2-44] Q. Did you ever talk to me on the 21st, Mr. Marmion?

A. No, I did not.

Q. You don't recollect or you don't remember?

A. I didn't talk to you on January 21st.

Q. Do you remember, did you talk to me at any time after that?

A. I talked to you several days later after January 20th, yes.

Q. Did you have a conference with me to—to mention what the D.A. wanted?

A. I had a conversation with you and I was there at your request.

Q. I didn't ask you that, Mr. Marmion.

I asked did you have a conversation, conference with me that you wanted to know what the D.A. wanted, you came down with the D.A. and wanted a taped statement.

A. That wasn't a conference. That was a conversation.

Q. You're not asking (sic) my question yes or no.

Did you tell me the D.A., District Attorney, was wanting a taped statement from me?

A. I know I did not. I asked you if you [2-45] would give me a taped statement. That was at my request. I was the one that was asking.

Q. Why did you want one, Mr. Marmion?

A. Standard police procedure. You had already confessed to me and I wanted a taped statement. That's standard police procedure.

Q. That's standard police procedure that you wanted a taped statement because—because you—because that's standard police procedure, am I correct?

A. We always like to have taped statements anytime we can get them, yes.

Q. Can you get a taped statement, Mr. Marmion?

A. From who?

Q. From me.

A. No, sir, I did not. I got a verbal or oral statement, whichever.

Q. Why did, on the 23rd or the 24th, if you cannot remember, why I did not want to tape a statement, do you recall?

A. I don't remember the exact date, but you said you didn't want to give me one.

Q. Because it would be used against me.

A. That's what you said.

Q. Mr. Marmion, when a statement is played [2-46] and a person hears what another person is saying, can he rehearse the other person in the statement?

A. Can he what?

Q. Can he rehearse another person's statement?

A. I can't answer for another person.

Q. You're not answering my question, Mr. Marmion.

I'm asking you if another person, if you sits in front of the defendant here and played ten or 20 minutes, can you rehearse another persons and say, "Yeah," and then just say, "Yeah," to what the other person says?

A. Are you saying you can or another person—

Q. To make it more clear, Mr. Marmion, like a tape recorder sits here in front of a person and you turn the tape on and you listen to another person confess about ten minutes, you listen to every detail, and cut it off, can another person rehearse another person's case by listening to it?

MR. LINGEMAN: Objection. Calls for speculation.

THE COURT: You can answer, if you understand the question.

THE WITNESS: I can't honestly answer [2-47] for another person. I don't know what goes through another person's mind.

Q. (By Mr. Edwards) I'm not asking you that. I'm asking you a question which to me is a yes or no answer.

I'm asking you can another person play another tape—to explain, make it more clearly, you have a tape in front of another person and you turn a tape of another man's confession on and you listen. Another person listen to that confession. And then—and then shoot it right back on.

A. Again, I don't believe I can answer the question. I can't answer for another person. What caliber of person, what level of intelligence. I can't answer your question, sir.

Q. I mean, a person—what I mean, rehearse. I mean to listen and hear a person talk and then he can say, "Well, all right, man, I'll talk to you. I'll tell you what you want to know."

A. Again, in all fairness to—

Q. Well, I—

A. I can't answer your question.

Q. Did you ever play a taped statement in front of me, Mr. Marmion, when I was supposed to [2-48] have made a statement?

A. I played a statement on Tuesday, January 20th at your request.

Q. Was it Soto's statement?

A. Yes.

Q. Approximately how long was it played?

A. Approximately nine, no more than 12 minutes.

MR. EDWARDS: I have no more questions.

THE COURT: Mr. Lingeman.

REDIRECT EXAMINATION

BY MR. LINGEMAN:

Q. Did you play the entire confession or just the first nine or 12 minutes.

A. Just the first nine or 12 minutes.

Q. Was that the entire time or just the beginning of it?

A. That was just the beginning. Just the beginning.

MR. LINGEMAN: That's all I have.

THE COURT: Mr. Edwards, anything further?

MR. EDWARDS: Oh, yes, I have one more question.

[2-43] **RECROSS-EXAMINATION**

BY MR. EDWARDS:

Q. I want to make known this on the record, Mr. Marmion, and that when I talked first to the first detective, I did not ask you to come down, am I correct?

MR. LINGEMAN: Objection. Asked and answered.

THE COURT: Overruled.

THE WITNESS: When I contacted you I went there of my own free will. I don't know what you told the other detective.

Q. (By Mr. Edwards) I'm not asking you that. You can't answer that because you weren't there.

Did I ask you to come and talk to me?

A. No, you did not the first time.

The second time, several days after the 20th of January, yes, you did ask to speak to me.

Q. Did I make any statement to you, did I make any statement to you that I was going to tape it or it was going to be used against me?

A. I asked and you said you didn't want to give one. You didn't want it used against you, [2-50] yes, you did make that statement.

Q. All right. Mr. Marmion, I have one more and I guess that's about it, Your Honor.

Did you ever try, when you and Mr. Reed (sic) was interrogating—when you and Mr. Reed was trying, would you say, solve the case?

A. Um-hum.

Q. Did you—when you got a confession from Mr. Reed involving himself in a crime, was he ever bugged on the street to put bugs on, police things to get more information of the crime?

A. We asked Mr. Reed if he would agree to let us put a bug on him and he said no way. We never did put one on him, no.

Q. Did you tell about that in your police report?

A. No, I did not.

MR. EDWARDS: That's all.

THE COURT: May he be excused?

MR. LINGEMAN: I have more questions because there was something else brought up.

THE COURT: I'll permit you to have re-redirect.

REDIRECT EXAMINATION

BY MR. LINGEMAN:

[2-51] Q. Have you testified before or given other information, or is this the first time this has ever come up about the bugging?

A. This is the first time I'm positive. It was never brought up.

Q. It was not brought up in the Soto trial.

A. No, I don't believe so.

THE COURT: Just a minute.

MR. LINGEMAN: That's all.

MR. EDWARDS: Immaterial.

THE COURT: Sustained. You may be excused.

[2-52] CHARLES MILNE,

was thereupon called as a witness in behalf of the State, and being first duly sworn, was examined and testified as follows:

THE COURT: Detective, the witnesses in this case are under the Rule. This means that you cannot be in the courtroom at any time except when you're testifying.

You're not to discuss your testimony with anyone except the attorneys until the case is finished. Thank you.

DIRECT EXAMINATION

BY MR. LINGEMAN:

Q. Please state your name and occupation.

A. Charles Milne. Detective, Tucson Police Department.

Q. Were you so employed back in 1974-75?

A. Yes, I was.

Q. How long have you been so employed?

A. Ten years.

Q. Did you have occasion to become involved with Detective Marmion in the investigation of the La Conga Bar robbery-murder?

A. Yes, I did.

[2-53] Q. Did you come into contact with Robert Edwards in regards to that investigation?

A. Yes, I did.

Q. And do you see Mr. Edwards in the courtroom?

A. Yes. He's the defendant sitting at the defense table.

Q. Did you have occasion to go to the Pima County Jail in 1976, it would have been January 20th, and have a conversation with Mr. Edwards at that time?

A. Yes.

Q. Okay. Who else was there besides yourself and Mr. Edwards?

A. Detective Marmion.

Q. Anyone else?

A. No, sir.

Q. About what time of the day was this?

A. It was approximately nine fifteen in the morning.

Q. Was the defendant advised of his constitutional rights before you talked to him?

Yes, he was, by Detective Marmion.

Q. Okay. And at some point in time was part of a tape from the person by the name of Manny Soto played for the defendant Mr. Edwards?

[2-54] A. Yes.

Q. Okay. At some point in time was a request made to tape a conversation between Detective Marmion and Mr. Edwards at that time?

A. Yes.

Q. Was the conversation subsequently taped?

A. No, sir.

A. Why not?

A. The defendant did not wish to have his voice recorded on tape.

Q. Was there some discussion or explanation by Detective Marmion that his statement could still be used even if it was not taped?

A. Yes.

Q. Can you tell me what you remember about that explanation?

A. Detective Marmion indicated that no matter what statements the defendant made to us, they could be used in court.

And the defendant indicated he understood that. He just didn't want his voice put on tape.

Q. Okay. Do you remember the conversation then that was had between Mr. Edwards and yourselves?

A. Yes.

[2-55] Q. Was it yourself or Detective Marmion that was actually doing the questioning?

A. Detective Marmion.

Q. Were you just there listening?

A. Yes.

Q. Would you tell me as best you can recall the substance of that conversation.

A. Detective Marmion asked the defendant to explain his participation in the robbery that occurred at the La Conga Bar.

He indicated that he was at Mr. Soto's residence approximately three or four days prior to the actual robbery. At that time Mr. Soto and Mr. Reed were drawing up a plan to pull the robbery and at that time he decided to go along with the other two.

On the morning of the robbery Mr. Soto, Mr. Reed, the defendant and Willie and Albert Williams responded to the bar. This was approximately twelve thirty in the morning.

They waited until the bar patrons had left. One of the individuals, I think it was Mr. Soto, looked through a window of the bar to see where Mr. Mungia and Nellie Esparza were located.

As those two people came out of the [2-56] tavern, they were met by Mr. Barefield—excuse me—Mr. Edwards and Mr. Reed.

He indicated that Mr. Reed was the only one that had a gun at that time. The other individuals acted as, according to Mr. Edwards, lookouts for him and Mr. Reed.

They went into the force—forced the victims back into the tavern and a short time later Mr. Reed had fired a couple of rounds from the revolver that he had.

Mr. Barefield—Mr. Edwards, I believe, indicated that the weapon that Mr. Reed had had a hair trigger on it, or something to that effect.

Mr. Mungia was taken into the back room of the tavern where the safe was located. He indicated they knew where the safe was because Mr. Soto had advised them he knew where it was because he had burglarized the bar on a previous occasion.

A short time later Mr. Edwards took Mrs. Esparza into the back room and when they entered the back room Mr. Mungia was in a chair and Mr. Reed was threatening him if he didn't open the safe and give them the money.

Subsequently the safe was opened. [2-57] I believe it was a metal money box and some money bags were taken out of the safe and then some personal items of Mr. Mungia's were removed from his person, according to Mr. Edwards, by Mr. Reed.

Except for a ring that Mr. Mungia had, which was given to Mr. Edwards by Mr. Reed, Mr. Reed kept all the remaining property.

And they subsequently ran from the tavern, meeting the other three outside.

Q. Is that all you can remember of the conversation?

A. Yes. Basically, yes, sir.

Q. How long did this conversation take place?

A. We were with Mr. Edwards approximately an hour and a half, maybe.

MR. LINGEMAN: That's all the questions I have.

THE COURT: You may cross-examine.

CROSS-EXAMINATION

BY MR. EDWARDS:

Q. State your name.

A. Charles Milne.

Q. Who?

A. Charles Milne.

[2-58] Q. Milne?

Q. Detective Mr. Milne, that was on the date of the 20th you say.

A. The 20th of January, yes.

Q. About nine thirty in the morning?

A. Roughly, yes.

Q. How could—how did you come out to the jail, did anybody tell you to come, did your—your lieutenant or I know they have a top person there, ask you to come and interview me?

A. My supervisor instructed me to accompany Detective Marmion, yes.

Q. Who was your supervisor that asked you to come and interview me?

A. Sgt. Bunting.

Q. So Sgt. Bunting asked you to come to interview me to make a confession, am I correct?

MR. LINGEMAN: Objection. That's not what the witness testified to.

THE COURT: You may answer. Overruled.

THE WITNESS: I was instructed by Sgt. Bunting to accompany Detective Marmion to the Pima County Jail where you were located at the time and conduct an interview.

Q. (By Mr. Edwards) Did Sgt. Bunting tell [2-59] you that he had already interviewed me?

A. No, sir, he did not.

Q. You came out there the morning about nine thirty and you were with Detective Marmion.

A. Yes.

Q. When—do you remember where I was? I mean, where you was to the interview, where you hold the interview that morning?

A. Yes. It was in one of the attorneys' booths.

Q. Mr.—before you interview me, I didn't have a attorney then, did I, when you came to interview me?

A. I don't know if you had one at that point or not.

Q. You know how I think, Mr.—Mr. Milne, you have been in homicide—how long have you been in homicide?

A. I was in homicide approximately 13 months.

Q. Thirteen months. So I think you know how the Court procedures go.

A. Somewhat.

Q. When you came down that morning, I was arrested January 19th, I think you recall that.

A. Yes.

Q. And I was brought to jail that night and [2-60] that morning I was supposed to have went to arraignment; is that correct?

A. It would be the following afternoon.

Q. I never went to arraignment while you was supposed to come down and interview me, am I correct?

A. You had not been to any type of a court arraignment prior to the time we talked to you.

Q. Mr. Milne, is arraignment where attorneys is appointed?

A. In some cases, yes.

Q. So I never had a attorney, am I correct, when you investigated—interrogated me.

A. I don't know, Mr. Edwards. It would be very possible for you to have a private attorney.

Q. So you're telling the Court that Sgt. Bunting asked you to come see me on that morning.

A. Sgt. Bunting instructed me to accompany Detective Marmion.

Q. Mr. Milne, on that—on that—when we can come down to recall that when you was in the little—the little law booth or attorneys' booth or what we can refer to—the D.O., did you send a D.O. to come get me?

A. A detention officer?

Q. Right.

[2-61] A. A request is put in through the jail personnel and they are the ones that brought you up to our booth, yes.

Q. Do you know that—that I was brought out of confinement to where you was at?

A. No, sir. You were brought up from some sort of confinement.

Q. Now, the detention officer brought me to the—to the attorney booth where you and Milne and, well, Detective—just you and Detective Marmion was sitting. Did you—what is the first thing you remember saying to me?

A. After you had sat down and Detective Marmion sat down, Detective Marmion advised you of your constitutional rights.

Q. And then after he advised me of my constitutional rights, a tape recorded was played.

A. Detective Marmion went through your rights rather thoroughly to make sure you understood all your rights.

Q. Thoroughly?

A. And also the fact that you had the right to an attorney. You did not request one at that time.

I believe you asked to hear the statement of Manny Soto.

[2-62] Q. How long—do you know how long that was played?

A. I recall it was approximately ten minutes or so.

Q. Mr. Milne, when you made out of what do you call it, report, did you have a interview that I had made a statement to you?

A. Detective Marmion indicated in his supplemental report that I was present during the time that the statement was made, but I never made one personally, no.

Q. Then it's not in your supplemental report.

A. No, it's not.

Q. Now, can you tell me or tell the Court how a verbal, what you call oral statement to a police officer, you know, how do you know—how do they make—I mean, is the defendant or the people you interrogating making a oral statement to you and put on a tape recorder or is it made like that or how is it made?

A. A verbal statement is just that, it's a statement made by an individual to a police officer.

Q. Is it on your regular procedure that you put it on a tape record?

[2-63] A. I'm sorry.

Q. Is it on your regular procedure that you put it on a tape recorder?

A. In all cases we try to get the statement put on tape, yes, sir.

Q. Could you tell me, Mr. Milne, when you was in this attorney booth with—with Mr. Marmion and I was present and you asked me and Mr. Marmion direct questions to me about making a statement, I said, could you tell the Courts mostly what did Marmion tell me?

A. Detective Marmion asked if you would supply a taped statement. You indicated that you preferred not to because you knew that the statement could be used in court.

Detective Marmion then advised that any statement you made to us could be used in court.

You indicated that you understood this, but you just did not want your voice recorded.

Q. Are you telling the Courts that I knew that either way it went that if I made a taped statement it could be used against me, but I didn't want my voice on the tape recorder, is that what you're saying?

A. Yes, sir.

[2-64] Q. Then you're saying again that you making the Court—telling the Courts here that I had made a verbal statement, but I knew that it could be used against me.

A. Yes, that was made very clear to you, sir, at the time.

Q. Mr. Milne, at any time of that day when me and Mr.—Mr. Marmion was—you called talking or interviewing, you called it investigation or interrogation, can we say that—did you leave or did you ever leave the period of time that me and Mr. Marmion was talking?

A. Yes, I left for a short period of time when I was notified by the jail personnel that I had a phone call.

Q. So—so you're telling me that all of the interrogation of you and what's his name, you wasn't there to hear the rest of what he talked about, you left for a little moment and come right back, is that what you're saying?

A. Yes. It was for a short period of time, a couple of minutes.

Q. A couple of minutes.

Mr. Milne, did you ever come back—come back down to the jail again?

A. Yes. I don't—it was, from what I [2-65] recall, it was several days after.

Q. Who was you down there to talk to?

A. I don't know who we talked to specifically, but we did—I think Detective Marmion was with me at the time and Detective Marmion had contacted you.

Q. Do you know what—you know what he contacted me for?

A. Again, I believe it was to see if you wanted to put the information down that you had given us on the statement and again you refused.

Q. Because it could be used against me, am I correct?

A. I don't know why you refused.

Q. Mr. Milne, I want to make it known—I mean, what—what intelligence of a person or way a person can be that knowingly and willingly make—I mean, what intelligence can we say that a person can, say, talk to a policeman and say, "All right. I'll make—I'll make a verbal statement."

A. Well—

Q. Let me finish my question, Mr. Milne.

A. Excuse me.

Q. "I'll make a verbal statement, but I don't make a taped statement 'cause it will be [2-66] used against me, the verbal statement."

Now, Mr. Milne, I'll make it more clear what I'm trying to say.

Is it—is it—since you have been a homicide or since you have been in the homicide as a police officer, and since your duty to—you must go by form of duties, am I correct, a line of duties and form of interrogation.

A. There are some procedures we follow, yes, sir.

Q. You do not break the procedures, do you?

A. They are not set dealings, Mr. Edwards. Everything has a degree of flexibility to it.

Q. Mr.—I'm asking you do not break them, do you? All you can say is yes or no.

A. Yes.

Q. Mr. Milne, is there any type of procedures where that you—that you offer deals?

A. I don't believe a police officer has the authority to make a deal or promises or whatever, that type of circumstance is done through the County Attorney's Office.

Q. Did you ever come and contact with Mr. Reed?

[2-67] A. I had very brief contact with Mr. Reed, yes.

Q. Did—was you at the people—I mean, was you at the time he suppose to have confessed?

A. No.

Q. How did you come in contact with Mr. Reed?

A. Through assisting Detective Marmion.

Q. Did you know about when he was released, did you know about what you call a bug or a device put in his clothes to where he could get more information?

A. As far as I know Mr. Reed never had a bug put on his clothes or person.

Q. Did the police ever ask him to do that at no time?

A. I believe he was asked.

Q. To get more information.

A. Well, I'm assuming that is what it was for. I wasn't present during this conversation.

MR. EDWARDS: That's all I have, Your Honor.

THE COURT: Mr. Lingeman.

MR. LINGEMAN: Nothing further, Your Honor.

THE COURT: You may be excused.

(Caption Omitted)

Proceedings March 22, 1977

A-30683

[3-9] DAVID HOFFMAN,

was thereupon called as a witness in behalf of the defendant, and being first duly sworn, was examined and testified as follows:

THE COURT: Mr. Hoffman, the witnesses in this case are under the Rule, but I'm not going to place you under it yet.

THE WITNESS: Thank you.

DIRECT EXAMINATION

BY MR. EDWARDS:

Q. Would you state your name.

A. David Hoffman.

Q. Could you tell the Court when you was my previous attorney and what year.

A. I believe—I don't have my file with me. I believe it was probably in 19—either late 1975 or early 1976. Certainly at the commencement of this case whenever the court's records indicate the first indictment was quashed by Judge Gin, whenever that indictment was handed down, whenever you were arrested I became your attorney.

THE COURT: He was arrested in January of 1976.

THE WITNESS: So it was January of 1976 [3-10] I believe I took the appointment in this case.

Q. (By Mr. Edwards) Mr. Hoffman, as you previous know that I was arrested January 19, 1976, and rearraigned and then you became my attorney, am I correct?

A. That's correct.

Q. As you became my attorney on that date it was a statement brought against me, am I correct?

A. There was an allegation that you had made a statement, yes.

Q. On that allegation that I had made a statement of 19—1976, was it one or two statements, Mr. Hoffman?

A. There was an allegation that you had made two statements to the police, that you talked with them on two occasions.

Q. Did we ever have a conversation about the statement that I had previous made?

A. We certainly did.

Q. Will you tell the Court that conversation?

A. The conversation was that with regard to the first statement, that wherein you denied any participation in the crimes alleged, you said that you had in fact said that.

[3-11] When it came to the second statement you said that you never said that to the police officer and demanded that the police officer—or that I make the police force—excuse me—that I make the police officer produce some tape recording of this statement you supposedly made or some written record of this statement and he was unable to do so with the exception of his report.

(Caption Omitted)

Proceedings March 24, 28, 1977
A-30683

[4-2] DAVID BARRY GURLAND,
was thereupon called as a witness in behalf of the defendant, and being first duly sworn, was examined and testified as follows:

THE COURT: Dr. Gurland, the witnesses in this case are under the rule, so you can't talk with anybody except the attorneys in this case and that includes the defendant. You're not to be in the courtroom except when you're testifying.

THE WITNESS: Yes, sir.

THE COURT: Mr. Edwards, you may [4-3] proceed.

DIRECT EXAMINATION

BY MR. EDWARDS:

Q. State your name.

A. David Barry Gurland, M.D.

THE COURT: I'm aware of Dr. Gurland's qualifications as a psychiatrist if counsel want to stipulate to that.

MR. LINGEMAN: I'll stipulate, Your Honor.

THE COURT: All right. What I'm saying is that Dr. Gurland may testify in this court as an expert witness on any—and express opinions in the medical field of psychiatry.

You may proceed.

Q. (By Mr. Edwards) Dr. Gurland, did you ever come in contact with me in 1976?

A. Yes, I did. The 2nd of December, 1976.

Q. Did your examination was on a Rule 11, was that correct?

A. That's correct, yes.

Q. And in your examination you found me competent to stand trial, am I correct?

A. That's correct, yes.

Q. While your examination—your examin-[4-4]ation of me, could you tell the Court that range of intelligence that you found out that I was supposed to be, Dr. Gurland?

A. I estimated your intelligence range to be somewhere in the dull normal range. Eighty to 90 I.Q. points.

Q. Is that normal, could you explain more what it is?

A. That would be low average or dull normal, if that's what the range would be considered.

People understand things, function, handle jobs of certain limitations, be able to be educated up to a certain degree.

Q. Dr. Gurland, could you tell he Court if a person's intelligence range is from 80 to 90 what is their intelligence about knowing or we could say in knowingly and intelligently knowing about police procedures and things like that?

A. They would have enough intelligence to understand what the reading of, say, the Miranda rules would be. They would be able to understand what the policeman would be saying to them as to, you know, did they want an attorney, did they wish to remain silent, did they know anything that they said could be used against them. They would know what that meant.

[4-5] Q. Mr. Gurland, did I—did we ever, while our examination was going on, did we ever occur, talk about the case of this murder case, did we ever talk about it in any way, conversational-wise?

A. I think I asked you some things about it, about your knowledge of it and so forth.

You pretty much denied any knowledge of what you were being charged with.

We didn't get into any further details than that.

Q. Dr. Gurland, in your report did you ever talk about the length of time that the defendant was ever in jail that would create a lapse of memory?

A. I think I did make mention of the fact that you had been in jail for approximately a year, I think, at the time that I saw you and I felt it had somewhat dulled your ability to think, that you were not as sharp as—and I think I related it to a report or a tape that I had heard that—of you speaking with an investigating officer about a year ago. And your thinking was quicker at that time. Probably more like you are today than you were when I saw you on the 2nd of December.

MR. EDWARDS: That's all the questions [4-6] I have.

MR. LINGEMAN: No questions.

(Captions Omitted)

Proceedings April 21, 1977

A-30683

[147] CLEVELAND REED aka KEVIN REED having been first duly sworn, testified as follows:

THE COURT: Mr. Reed, the witnesses in this case are under the rule so you are not permitted to be in the courtroom at anytime except when you testify.

In addition, you're not to discuss your testimony with anyone at all except the attorneys until the case is finished. Do you understand this?

THE WITNESS: Yes.

DIRECT EXAMINATION

BY MR. LINGEMAN:

Q. State your name, please.

A. Cleveland Reed.

Q. Also known as Kevin Reed?

A. Yes.

Q. Where do you reside?

A. Pima County Jail.

[148] Q. Mr. Reed, were you involved in the robbery of the La Conga Bar back in 1974?

A. Yes, I was.

Q. And were you apprehended in 1975 on some separate different charges sometime in '75?

A. Yes, I was.

Q. Where were those charges—what were those charges?

A. Armed robbery and—well, no, it's separate charges in '75—I was apprehended for grand theft, auto theft and arson third degree.

Q. Okay.

Do you have any felony convictions at this time?

A. Yes, I do.

Q. What are those?

A. The grand theft I was arrested for in '75. Also armed robbery and possession of a firearm after a felony.

Q. Okay.

What's that armed robbery conviction from and the other possession of a firearm from?

A. The State of Kansas.

Q. Are you currently under sentence from Kansas?

A. Yes, I am.

[149] Q. What's that sentence?

A. The sentence is five to ninety-nine, and one to ten.

Q. What is the one to ten?

A. Possession of a firearm.

Q. Okay.

Do you have any sentence here that you're under sentence for?

A. Yes.

Q. What are those?

A. It's three to four for grand theft.

Q. Okay.

Does that grand theft three to four run concurrent—at the same time as the five to ninety-nine in Kansas?

A. Yes.

Q. You understand you have to go back to Kansas and serve your time in Kansas when you're through here?

A. Yes.

Q. When you were apprehended in '75, did you indicate to the authorities that you had information from the La Conga Bar robbery?

A. Yes, I did.

Q. Did you arrange a deal then with the County Attorney's Office about—reference that [150] information on the La Conga Bar Robbery?

A. Yes, I did.

Q. Okay.

What was the deal that was made exactly?

A. That if I gave testimony concerning the armed robbery of the La Conga Bar then I would be granted immunity from it and all charges derived from it.

Q. What about those other charges that you were picked up, the grand theft and the auto theft, and the arson third degree?

A. In a plea bargain to grand theft, I pleaded guilty to grand theft, and the others would be dropped.

Q. Okay.

Any sentence that you got resulting from the grand theft, was that to run concurrent with your sentence in Kansas?

A. Yes, that was part of it.

Q. Okay.

Now, sometime after the deal was made in '75 were you released from custody?

A. Yes, I was released OR.

Q. Okay.

Was that a couple of weeks after the deal was made?

[151] A. Yes, it was.

Q. And were you supposed to be remaining here in Tucson?

A. Yes, I was.

Q. Did you remain here in Tucson?

A. No, I didn't.

Q. Where did you go?

A. I left and went back to Wichita, Kansas.

Q. Were you arrested there back in Kansas?

A. Yes.

Q. What were you arrested for?

A. For an armed robbery that had happened in '74, early part of '74.

Q. Robbery that occurred before this robbery even took place at the La Conga Bar?

A. Yes, sir.

Q. The charge was outstanding against you there?

A. Yes, it was.

Q. Did they know about those charges here in Tucson when you were arrested?

A. No, sir.

Q. Why didn't they know about them?

A. Because at the time I didn't tell them and also I was going under an alias name.

Q. When I say "them" I'm talking about the [152] people that gave you the OR?

A. Right.

Q. They didn't know your charge?

A. No, there was no—I hadn't told them and they couldn't check it out through the records because I, at the time, was under an alias.

Q. What was the alias?

A. Kevin.

Q. Kevin Reed?

A. K-e-v-i-n.

Q. What is your real name?

A. Cleveland.

(Caption Omitted)

Proceedings April 26, 27, 1977

A-30683

[5-109] Ladies and gentlemens of the jury, we have a policeman. His name was Sgt. Bunting of the State witness.

Sgt. Bunting said on that date he arrested me in 1967—1967, January, 16 months after the crime he had alleged my testimony or statement that he had made. Mr. Reed's statement that he had made when he had been caught, not after he had made the statement further, but after he had been drug back from Kansas City and then he involved me in a crime.

Ladies and gentlemens of the jury, you see Mr. Bunting said the man had a alibi statement and I had a alibi statement of what we call the police say alibi statement.

To see I don't understand alibi. I understand the statement where my whereabouts were at the time this crime was supposed to have alleged.

You see that Mr. Bunting got on the stand, this was a police officer. "No," he said, he wasn't involved. And then he made a statement here and then he made the statement to [5-110] you.

You must take that because there was evidence in presenting it to you.

Ladies and gentlemens of the jury, then after that day when I was taken to jail, it was supposed to be a man named Marmion come to see me.

Marmion come to see me and he allege that he talk to me. He allege that I gave what you call a statement of my involvement in the crime.

He alleged that I was involved in the crime, but he never alleged to you to explain how he understand me that he got the statement.

He allege to you that I told him that I was involved in a crime. He took a piece of paper, ladies and gentlemens. It couldn't come from my first tape. He never told it was voluntary.

You must consider if my statement is voluntary. If any statement you make to the police officer is voluntary.

Marmion never told you it was voluntary, but he couldn't produce taped statement that I was supposed to have told him, show him the statement involved and everything. He [5-111] mentioned in the statement he introduce it from his mind after he has talked to me and made a transcript of the statement.

He never presented the statement. They never presented anything to what a man wrote up his self on a piece of paper and then he says I was involved in the crime.

You must take the statement of two. The statements of evidence that are presented to you. Must take the evidence that are presented to you, ladies and gentlemens.

The evidence that you heard from my own voice, that you heard on tape, that you heard with voluntarily made, you must take that all because it was presented as evidence.

And then you must take, and then the statement that the police alleged against me was not on tape, was—was not anywhere, but not what you call from mine, what I wrote up his self. Wrote it himself.

Ladies and gentlemens, you must take that into what we call into consideration, into evidence.